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DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-810]

Silicon Metal from Australia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that silicon metal from Australia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2016, through December 31, 2016.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Brian Smith or Denisa Ursu, AD/CVD

Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department published the notice of initiation of this investigation on April 4, 2017.¹ On August 1, 2017, the Department postponed the preliminary

¹ See *Silicon Metal from Australia, Brazil, and Norway: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 16352 (April 4, 2017) (*Initiation Notice*).

determination of this investigation and the revised deadline is now October 4, 2017.² For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is silicon metal from Australia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. After evaluating these comments, the Department preliminarily determines that modifying the scope language as it appeared in the *Initiation Notice* is not warranted. *See*

² *See Silicon Metal from Australia, Brazil, and Norway: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 82 FR 35753 (August 1, 2017).

³ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Silicon Metal from Australia" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁵ *See Initiation Notice*.

the scope in Appendix I to this notice. However, the Department is inviting comment on one of the issues raised: the appropriate calculation methodology for determining the silicon content of out-of-scope products (*i.e.*, silicon metal with a silicon content in excess of 99.99 percent), and, specifically, which impurities should be taken into account in that calculation. These comments are due no later than November 6, 2017. Rebuttal comments will be due no later than November 13, 2017. For a summary of the product coverage comments submitted on the record of this proceeding, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. The Department has calculated constructed export prices in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, the Department preliminarily finds that critical circumstances exist for Simcoa. For a full description of the methodology and results of the Department's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination the Department shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers

individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. The Department calculated an individual estimated weighted-average dumping margin for Simcoa Operations Pty Ltd. (Simcoa), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis*, or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Simcoa is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

The Department preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/Producer	Estimated Weighted-Average Dumping Margin (percent)
Simcoa Operations Pty Ltd.	20.79
All-Others	20.79

Suspension of Liquidation

In accordance with section 773(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the estimated weighted-

average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. The Department preliminarily finds that critical circumstances exist for imports of subject merchandise produced or exported by Simcoa and all others. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of shipments of subject merchandise from the producer(s) or exporter(s) identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. In the concurrent CVD silicon metal investigation, however, the Department preliminarily did not make an affirmative determination

for countervailable export subsidies. Therefore, the Department has not offset the estimated weighted-average dumping margins by countervailable export subsidies.

Disclosure

The Department intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, the Department intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.⁶ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and

⁶ See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of the Department's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On September 13, 2017, pursuant to 19 CFR 351.210(e), Simcoa requested that the Department postpone the final determination and that provisional measures be extended to a period not to exceed six months.⁷ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, the Department is postponing the final determination and extending the provisional measures from a four-month period to a period not

⁷ See Letter from Simcoa, "Silicon Metal from Australia: Request for Postponement of Final Determination," dated September 13, 2017.

greater than six months. Accordingly, the Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Dated: October 4, 2017.

Appendix I

Scope of the Investigation

The scope of this investigation covers all forms and sizes of silicon metal, including silicon metal powder. Silicon metal contains at least 85.00 percent but less than 99.99 percent silicon, and less than 4.00 percent iron, by actual weight. Semiconductor grade silicon (merchandise containing at least 99.99 percent silicon by actual weight and classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2804.61.0000) is excluded from the scope of this investigation.

Silicon metal is currently classifiable under subheadings 2804.69.1000 and 2804.69.5000 of the HTSUS. While HTSUS numbers are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
 - II. Background
 - III. Period of Investigation
 - IV. Scope Comments
 - V. Discussion of the Methodology
 - A. Determination of the Comparison Method
 - B. Results of the Differential Pricing Analysis
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 - C. Cost of Production Analysis
 - 1. Calculation of COP
 - 2. Test of Comparison Market Sales Prices
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 - X. Currency Conversion
 - XI. Critical Circumstances
 - XII. Conclusion
- [FR Doc. 2017-22067 Filed: 10/11/2017 8:45 am; Publication Date: 10/12/2017]